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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re CARLOS S., a Person Coming Under
the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

CARLOS S.,

Defendant and Appellant.

G045089

(Super. Ct. No. DL036568)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Jacki C. Brown, Judge. Affirmed in part, reversed in part and remanded.

Cindy Brines, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Barry Carlton and Scott C. Taylor, Deputy Attorneys General, for Plaintiff and Respondent.

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The trial court did not violate the minor's constitutional rights by requiring that his residence be approved by the probation officer. The court lacked jurisdiction on the first petition because it was barred by the statute of limitations. We affirm in part, reverse in part and remand.

I

FACTS

The district attorney filed four separate petitions against the minor Carlos S., born in May 1993.

The first petition, filed on February 18, 2010, alleged that on February 15, 2009, the minor stole property from Costco.

The second petition alleged that on March 10, 2009, the minor stole property from Ralphs. The juvenile court ordered the petition dismissed "as the statute of limitations has run out."

The third petition alleged that on July 20, 2010, the minor drove at excessive speed under the influence of alcohol and caused bodily harm while engaging in a speed contest. It also alleged that on the same date, the minor drew and exhibited a knife in a threatening manner in the presence of a victim. The court accepted admissions for the first and third petitions at the same time, and placed the minor on probation. One of the terms and conditions was that the minor serve 120 days in juvenile hall.

The fourth petition alleged that on November 18, 2010, the minor committed two second degree robberies. The juvenile court found the allegations in the petition to be true, and again granted probation to the minor. One of the terms and conditions was that the minor serve 300 days in juvenile hall. The court also made the following order: "Upon his release, he is to maintain a residence approved by the probation officer" No objection was made to this term when the juvenile court made its order.

II DISCUSSION

Terms and Conditions of Probation

The minor now contends the trial court violated his federal constitutional rights when it required that his residence be approved by the probation officer. He argues: “This condition does not give [him] notice whether he is either violating his probation or complying with it, and therefore the condition is vague.” He adds: “The condition also is not narrowly tailored to achieve either the goal of rehabilitation or protection of the public,” that it is overbroad and impinges on his rights to privacy and freedom. He asks this court to strike that condition.

“‘[T]he juvenile court’s discretion is not boundless. *Sheena K.* [(2007) 40 Cal.4th 875], for example, involved a challenge to conditions of juvenile probation based on vagueness and overbreadth. [Citation.] Under the void for vagueness constitutional limitation, “[a]n order must be sufficiently precise for the probationer to know what is required of him, and for the court to determine whether the condition has been violated.” [Citations.] In addition, the overbreadth doctrine requires that conditions of probation that impinge on constitutional rights must be tailored carefully and reasonably related to the compelling state interest in reformation and rehabilitation. [Citations.] “If available alternative means exist which are less violative of the constitutional right and are narrowly drawn so as to correlate more closely with the purposes contemplated, those alternatives should be used.” [Citations.] [¶] Although the minor did not object to any of the conditions at issue when they were imposed in the juvenile court, we do not deem the issues forfeited on appeal, since the failure to object on the ground that a probation condition is unconstitutionally vague or overbroad is not forfeited on appeal. [Citation.] We apply the same rule to other constitutional challenges to a probation condition. [¶] Generally, we review the court’s imposition of a probation condition for an abuse of discretion. [Citations.] However, we review constitutional challenges to a probation

condition de novo. [Citation.]” (*In re Shaun R.* (2010) 188 Cal.App.4th 1129, 1143.)

In *People v. Olguin* (2008) 45 Cal.4th 375, the condition at issue was “[k]eep the probation officer informed of place of residence, cohabitants and *pets*, and give written notice to the probation officer twenty-four (24) hours prior to any changes.” (*Id.* at p. 380.) The defendant in *Olguin* argued the requirement for notification of the presence of pets had no relationship to driving under the influence, the crime of which he was convicted, and that pet ownership is not reasonably related to future criminality. (*Ibid.*) The California Supreme Court rejected the argument, finding: “The condition requiring notification of the presence of pets is reasonably related to future criminality because it serves to inform and protect a probation officer charged with supervising a probationer’s compliance with specific conditions of probation. As noted above, to ensure that a probationer complies with the terms of his or her probation and does not reoffend, a probation officer must be able to properly supervise that probationer. Proper supervision includes the ability to make unscheduled visits and to conduct unannounced searches of the probationer’s residence. Probation officer safety during these visits and searches is essential to the effective supervision of the probationer and thus assists in preventing future criminality. Therefore, the protection of the probation officer while performing supervisory duties is reasonably related to the rehabilitation of a probationer for the purpose of deterring future criminality.” (*Id.* at p. 381.)

Here the minor is required to get approval of his residence from his probation officer. We assume the probation officer will not act “irrationally or capriciously” in granting or denying approval. (*People v. Olguin, supra*, 45 Cal.4th at p. 383.) When the probation officer makes the decision whether or not to grant approval, the minor will have notice if he is violating his probation. Approval of the minor’s place of residence will provide some assurance regarding safety for the probation officer, and supervision for purposes of preventing future criminality should be more effective if the probation officer approves of the residence and knows that unscheduled visits will be

possible. The condition is narrowly tailored, not vague or overbroad, will provide notice to the minor and will enhance supervision of the minor by the probation officer in attempting to protect the public. Thus we determine the condition withstands constitutional scrutiny.

Statute of Limitations

The minor also argues the charges in the petition filed on February 18, 2010, alleging he committed petty theft on February 15, 2009, were barred by the statute of limitation. The minor did not challenge the court's jurisdiction prior to sentencing. The Attorney General agrees the juvenile court did not have jurisdiction. So do we.

The statute of limitations for petty theft is one year. (Pen. Code, § 802.) “[W]here the pleading of the state shows that the period of the statute of limitations has run, and nothing is alleged to take the case out of the statute, for example, that the defendant has been absent from the state, the power to proceed in the case is gone.” (*People v. McGee* (1934) 1 Cal.2d 611, 613-614.) “[D]efendants may not forfeit the statute of limitations if it has expired as a matter of law[;] they may certainly lose the ability to litigate factual issues such as questions of tolling.” (*People v. Williams* (1999) 21 Cal.4th 335, 344.) If a defendant admits an offense as part of a plea bargain, an express waiver of an expired statute of limitations is required: “We conclude that he may expressly waive the statute of limitations when, as here, the waiver is for his benefit.” (*Cowan v. Superior Court* (1996) 14 Cal.4th 367, 370.)

III

DISPOSITION

Since the sentence on the first petition was illegal and the sentence for the admissions on the first and third petitions was combined, we remand the matter to the juvenile court to either obtain an express waiver of the statute of limitations or resentence the minor on the third petition. We recognize this is an appeal from judgment on the

fourth petition, but an appellate court may “correct a sentence that is not authorized by law whenever the error comes to the attention of the court” (*In re Ricky H.* (1981) 30 Cal.3d 176, 191.) Judgment on the fourth petition is affirmed.

MOORE, J.

WE CONCUR:

O’LEARY, P. J.

RYLAARSDAM, J.